IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WP(C).No. 10522 of 2007(C)

PETITIONER:
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1. **K.JAYAKUMAR,H.S.S.T COMMERCE AMRUTA SANSKRIT HIGHER SECONDARY SCHOOL,PARIPALLY,KOLLAM.**

2. **SIVADASAN P,N.N.M.H.S.S CHELAMBRA, PULLIPARAMBA P.O,MALAPPURAM DISTRICT.**

3. **ABDUL MANAF VALIYAPEEDIKAYIL, M.I.H.S.S.PONNANI,PONNANI SOUTH P.O,MALAPPURAM DISTRICT.**

4. **SAJEENA A,A.K.M.H.S.S.MYLAPUR, UMAYYANALLUR P.O,KOLLAM.**

5. **BABEENA K.S, A.K.M.H.S.S.MYLAPUR, UMAYYANALLUR P.O,KOLLAM.**

6. **BINDU P.C,A.K.M.H.S.S.MYLAPUR, UMAYYANALLUR P.O,KOLLAM.**

7. **YAHIJA S,T.K.M.H.S.S.,KARICODE, KOLLAM- 691 005.**

8. **SREENATHAN O,N.M.H.S.S.,THIRUNAVAYA, MALAPPURAM DISTRICT.**

9. **SUDHA JYOTHI T.V,S.V.H.S.S PALEMAD, MALAPPURAM DISTRICT.**

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT,GENERAL EDUCATION DEPT. SECRETARIAT,TRIVANDRUM.

BY GOVT.PLEADER SRI.A.J.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

W.P.(C).No.10522 OF 2007

Dated this the 29th day of March, 2007

JUDGMENT

Case of the petitioners in brief is as follows:

Petitioners are teachers working in various Government aided schools. While working as teachers petitioners applied for leave under the provisions of the Kerala Service Rule for joining and completing the B.Ed. course. In Exts.P1 to P9 it is stated that the period of leave without allowance will not count for service benefits including pension. According to the petitioners, the provisions regarding grant of increment and other service benefits for teachers taking leave without allowance for B.Ed. course and other teacher's training course is contained in the 3rd proviso to Rule 33(a)(2) of Part I K.S.R. The said provision clearly states that the leave without allowance granted for completing the Teacher's training course will count for increment purposes. The

condition in Exts.P1 to P9 is impugned as contrary to this statute. Petitioner relied on Ext.P12 judgment where in this court referred to an earlier judgment in W.P.(C)No.26782/05, wherein learned Single Judge had considered the matter and taken the view that such leave granted will not result in loss of right to increment.

In such circumstances, I feel that if the same facts are present, there cannot be any discrimination. However, learned Government Pleader points out that as regards petitioners covered by Exts.P5, P6 and P7 there is a distinction. According to him, the rule in question itself was amended with effect from 11/05/2005 and Exts.P5, P6 and P7 would show that leave was granted on dates subsequent to the date of amendment to the rule and consequently the petitioners 5,6 and 7 cannot lay claim to the benefit of the judgment.

In such circumstances, the writ petition will stand disposed of as follows:

First respondent will consider the case of petitioners 1 to 4, 8

and 9 in regard to the matter of grant of increment in the light of the judgment in W.P.(C)No.26782/05 within one month from the date of receipt of a copy of this judgment. As regards petitioners 5, 6 and 7, first respondent will consider whether petitioners are entitled to the benefit of the judgment even though they have been granted leave after the date of the amendment. First respondent is free to consider the matter and take a decision strictly in accordance with law. A decision will be taken after affording an opportunity of hearing to the petitioners 5, 6 and 7 within a period of two months from the date of receipt of a copy of this judgment. It is open to the petitioners to raise all their contentions including the contention that the course was commenced prior to the date of the orders and leave was applied for prior to amendment.

K.M.JOSEPH
JUDGE

sv.